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BEFORE THE ARIZONA CORPORATION COMMISSION

2015 NOV 24 1 59 39

IN THE MATTER OF THE APPLICATION
OF LIBERTY UTILITIES (BLACK
MOUNTAIN SEWER) CORP., AN
ARIZONA CORPORATION, FOR
AUTHORITY TO ISSUE EVIDENCE OF
INDEBTEDNESS IN AN AMOUNT NOT
TO EXCEED \$3,400,000.

DOCKET NO. SW-02361A-15-0206
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION
OF LIBERTY UTILITIES (BLACK
MOUNTAIN SEWER) CORP., AN
ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS
WASTEWATER RATES AND CHARGES
FOR UTILITY SERVICE BASED
THEREON.

DOCKET NO. SW-02361A-15-0207

Arizona Corporation Commission

DOCKETED

NOV 24 2015

DOCKETED BY

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DIRECT TESTIMONY OF

MAYOR LES PETERSON

Town of Carefree

November 24, 2015

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TABLE OF CONTENTS

I. INTRODUCTION AND PURPOSE OF TESTIMONY.....1

II. BACKGROUND ON THE BOULDERS WASTEWATER TREATMENT
PLANT2

III. PROPOSED SETTLEMENT AGREEMENT8

IV. CONCLUSION12

1 **INTRODUCTION AND PURPOSE OF TESTIMONY**

2 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

3 A. My name is Les Peterson. My business address is 8 Sundial Circle, Carefree,
4 Arizona 85377. I am the Mayor of the Town of Carefree ("Town").
5

6 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

7 A. I am testifying on behalf of the Town. Approximately 50% of the Town's
8 residents are wastewater customers of Liberty Utilities (Black Mountain Sewer)
9 Corp. ("Liberty Black Mountain"). In addition, the Town has a number of
10 businesses which are commercial customers of Liberty Black Mountain.
11

12 **Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL**
13 **BACKGROUND?**

14 A. Arizona State University; BA, 1965, MA, 1967
15 Teacher; Scottsdale, AZ School District, 1967
16 Marketing; Procter & Gamble, 1968-1971
17 Promotion Manager; The Pillsbury Company, 1971-1973
18 Executive Vice President; Glendinning Companies, 1973 – 1979
19 Founder and President; Connecticut Consulting Group, 1979-1991
20 Executive Vice President; Clarion Division of Darcy Masius Benton & Bowles,
21 1991 – 2000
22

23 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?**

24 A. Yes. I testified on behalf of the Boulders Homeowners Association ("BHOA") in
25 the 2008 rate case filed by Liberty Black Mountain's predecessor, Black
26 Mountain Sewer Corporation (Docket No. SW-02631A-08-0609). At that time I

1 was President of BHOA.

2
3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

4 A. I am testifying in support of the Proposed Settlement Agreement between Liberty
5 Black Mountain, the Town, BHOA and CP Boulders, LLC dba the Boulders
6 Resort (the "Resort") filed on November 16, 2015.

7
8 **BACKGROUND ON THE BOULDERS WASTEWATER TREATMENT PLANT**

9 **Q. CAN YOU PROVIDE SOME BACKGROUND ON THE ISSUES THAT**
10 **YOUR TESTIMONY WILL DISCUSS?**

11 A. Yes. Liberty Black Mountain owns and operates a single wastewater treatment
12 facility (the "Plant"), which is located in the midst of the Boulders residential
13 community and within the Town boundaries. The Plant was built more than 40
14 years ago and is located adjacent to one of the Resort's golf courses. The Plant is
15 situated less than 100 feet from three homes and within 1,000 feet of
16 approximately 300 homes. If constructed today, the Plant would require a setback
17 of either 350 feet (for a facility without odor, noise, and aesthetic controls) or at
18 least 100 feet (for a facility with full odor, noise, and aesthetic controls).

19 The Plant treats up to 120,000 gallons of wastewater each day, which
20 represents roughly 20 percent of Liberty Black Mountain's daily inflow.
21 The remainder of Liberty Black Mountain's wastewater flow is delivered to the
22 City of Scottsdale ("Scottsdale") for treatment under that certain Wastewater
23 Treatment Agreement between Liberty Black Mountain and Scottsdale dated
24 April 1, 1996 ("Scottsdale Agreement").

25 All effluent treated by the Plant is delivered to the Resort. Liberty Black
26 Mountain and the Resort are or were parties to an Effluent Delivery Agreement

1 dated March 2001 ("EDA"). The EDA has a 20 year term, and prevents Liberty
2 Black Mountain from unilaterally closing the plant and cutting off the Resorts'
3 supply of the effluent. The Resort has a continuing need for the Plant's effluent
4 to water the Resort golf courses during peak water use times.

5 In Liberty Black Mountain's¹ 2005 rate case, BHOA intervened and
6 brought to the Commission's attention the odor and noise issues related to the
7 wastewater operations. The odor problem was severe and pervasive throughout a
8 broad portion of the Boulders subdivision. Testimony and public comment
9 suggested that the odors arose from both the Plant and the collection system, but
10 some thought corrections to the collection system would be the most efficient
11 initial steps to take to see if those less costly corrections could solve the odor
12 problems. In Decision No. 69164 in that rate case, the Commission required
13 Liberty Black Mountain to implement one of the two proposed solutions in order
14 to "mitigate" the odor problems. The Decision expressed the Commission's
15 desired goal as "odor remediation in the Boulders community." The Commission
16 further indicated that it believed that action should be taken to advance a solution
17 "that will enable all customers...to enjoy fully their property without enduring
18 offensive odors."

19 Despite Liberty Black Mountain's improvements to the collection system in
20 response to Decision No. 69164, which did alleviate a small portion of the
21 pervasive odors, strong odor problems persisted. In Liberty Black Mountain's
22 2008 rate case, over five hundred public comments were lodged with the
23 Commission (letters, petitions and appearances at the public comment portion of
24

25 ¹ At various time discussed herein, Liberty Black Mountain was known as Black Mountain Sewer Company and
26 before that, Boulders Carefree Sewer Corporation. For ease of reference, I will refer to the utility as Liberty Black Mountain.

1 the hearing) confirming the ongoing odor problems. Commenters indicated the
2 impacts of the odors on their lifestyle, including interruption of Thanksgiving
3 dinner on the patio, inability to leave windows open to enjoy fresh air, noises
4 from operation of the plant disturbing sleep, embarrassment to host guests who
5 may experience intense odors, and golfers who must hold their breath as they pass
6 the Plant while playing the course. It had become clear that odor problem
7 identified by the Commission in Decision No. 69164 in fact was originating in
8 both the collection system and the Plant and that upgrades to the collection system
9 alone had not remedied the full problem.

10 Liberty Black Mountain filed a rate application with the Commission in
11 December 2008. The BHOA intervened as a party, and then, Liberty Black
12 Mountain and the BHOA entered into a Plant Closure Agreement on September
13 17, 2009. The Plant Closure Agreement set forth terms and conditions under
14 which Liberty Black Mountain agreed to close the Plant. One of the conditions to
15 closing the Plant was the Resort agreeing to termination of the EDA. In addition,
16 the Plant Closure Agreement provided that upon the utility's subsequent sale of
17 the site on which the Plant is located (which could become two, or perhaps three,
18 residential lots), Liberty Black Mountain would share its gain on the sale of
19 property equally with ratepayers. The Town was also a party to the rate case and
20 supported the Plant Closure Agreement.

21 The Commission issued Decision No. 71865 on September 1, 2010 ("Phase
22 1 Decision"). Concerning the Plant Closure Agreement, the Commission stated
23 that it was a reasonable resolution of the odor concerns expressed by hundreds of
24 Liberty Black Mountain customers. To facilitate Liberty Black Mountain's
25 funding and recovery of costs associated with closure of the Plant,
26 the Commission also approved a special plant closure cost recovery mechanism in

1 the Phase 1 Decision. The Resort was not a party to the Phase 1 proceedings.

2 After the Phase 1 Decision, alternatives to the effluent supplied by Liberty
3 Black Mountain to the Resort were considered. When the Resort and Liberty
4 Black Mountain were unable to reach agreement to terminate the EDA in order
5 for the Plant closure to proceed, the BHOA sought and obtained Commission
6 intervention. On January 24, 2012, the Commission reopened Decision No.
7 71865 for the sole purpose of determining whether it should order Liberty Black
8 Mountain to close the Plant.

9 The Resort intervened after the matter was reopened and additional
10 hearings took place in May 2012. The Town did not participate as a party but
11 passed a resolution that was filed with the Commission supporting closure of the
12 Plant.

13 The Commission issued the Decision No. 73855 (the "2013 Closure
14 Order") on May 8, 2013. In the 2013 Closure Order, the Commission concluded
15 that continued operation of the Plant in the midst of a residential neighborhood
16 would have a detrimental effect on the quality of life for residents within the
17 community. As the Commission held "[t]he record supports a finding that due to
18 its location, the [Plant] can no longer be operated in a manner consistent with the
19 public interest[.]"

20 The Resort filed a petition for rehearing of the 2013 Closure Order pursuant
21 to A.R.S. § 40-253, which was denied by operation of law. The Resort then
22 appealed the 2013 Closure Order pursuant to A.R.S. § 40-254. The Superior
23 Court in Maricopa County Superior Court Case No. CV2013-00784 upheld the
24 Commission's order, finding that the plant closure order was within the
25 Commission's statutory powers. The Resort appealed the Superior Court's
26 decision, which appeal is currently pending before the Arizona Court of Appeals

1 as Case No. 1 CA-CV 14-0643 (the "Appeal"). Oral argument in the Court of
2 Appeals is presently scheduled for December 8, 2015. The Resort also filed
3 several other actions related to the 2013 Closure Order. All of those matters have
4 been concluded.

5
6 **Q. WHAT DEVELOPMENTS HAVE OCCURRED SINCE THE 2013**
7 **PLANT CLOSURE ORDER WAS ISSUED?**

8 A. The engineering of design modifications to Liberty Black Mountain's wastewater
9 transmission system necessary for flows to be delivered to the City of Scottsdale
10 instead of the Plant have been substantially completed. The most reasonable
11 alternative is Option 2—City of Scottsdale, Tom Darlington Drive – Single FM
12 w/ Ex as shown in Exhibit 1 to the Proposed Settlement Agreement. The total
13 estimated cost of the improvements is \$2.6M.

14 Liberty Black Mountain is currently negotiating an amendment to the
15 Scottsdale Agreement that would allow it to close the Plant and purchase
16 additional capacity to replace the current capacity in the Plant. Though the
17 Scottsdale Agreement provides that Liberty Black Mountain can purchase
18 additional treatment capacity for a cost of \$6 per gallon, Scottsdale has taken the
19 position that the Scottsdale Agreement would be terminated by the closure of the
20 Plant. Scottsdale is now offering replacement capacity at \$10 per gallon for a
21 total replacement capacity cost equal to \$1.2M, which amount is in addition to the
22 estimated costs to upgrade the transmission system. The \$10 per gallon price is
23 still well below market rates for treatment capacity, which are in the range of \$25
24 to \$30 per gallon.

25 Liberty Black Mountain filed the 2015 Rate Case on June 22, 2015. As
26

1 stated in Liberty Black Mountain's application and supporting testimony, the rate
2 case was brought (1) because the plans for and estimated costs of the Plant
3 closure had changed since the Phase 1 and 2013 Closure Orders; (2) Liberty
4 Black Mountain has over \$1M of investment in the Plant closure; (3) Liberty
5 Black Mountain has not earned sufficient revenue and returns, and (4) the request
6 and need for a new commercial rate design.

7 **Q. HOW DOES LIBERTY BLACK MOUNTAIN'S 2015 RATE**
8 **APPLICATION PROPOSE TO TREAT THE PLANT CLOSURE COSTS?**

9 A. Mr. Sorenson's Direct Testimony indicated that through May 31, 2015, Liberty
10 Black Mountain incurred \$1,120,403.31 of engineering and legal costs related to
11 closing the Plant. Liberty is seeking to recover those costs in this rate proceeding.
12 Liberty has indicated in discovery that as of September 30, 2015, that amount is
13 \$1,133,080.51. Of that amount, \$281,829.36 is legal expenses related to the
14 litigation by Mr. Marshall related to odors and the Plant. Mr. Marshall's home is
15 one of the three homes within 100 feet of the Plant. Liberty Black Mountain
16 ultimately settled with Mr. Marshall, and is seeking recovery of the amounts
17 incurred in connection with that litigation.

18 Also included in the total legal and engineering cost is \$217,606.95 of legal
19 expenses related to the Resort's legal challenges to the 2013 Closure Order. The
20 Resort initially filed four legal actions related to the 2013 Closure Order. The
21 Resort's appeal to the Superior Court, CV2013-007804, was resolved by the court
22 on summary judgment motions, with the court upholding the 2013 Closure Order.
23 The Resort then appealed that ruling to the Court of Appeals. The matter has
24 been fully briefed and oral arguments have been scheduled for December 8, 2015
25 (although the parties will seek a stay of such oral argument pursuant to the
26 Proposed Settlement Agreement). The Town intended to object in this rate

1 proceeding to Liberty's recovery of these legal expenses related to the Marshall
2 litigation and the Resort's appeals of the Commission's 2013 Closure Order.
3

4 **PROPOSED SETTLEMENT AGREEMENT**

5 **Q. PLEASE DESCRIBE THE MAJOR TERMS OF THE PROPOSED**
6 **SETTLEMENT AGREEMENT.**

7 A. The Proposed Settlement Agreement was filed in this matter on November 16,
8 2015. It provides that Liberty Black Mountain will close the Plant on November
9 30, 2018. My understanding is that the Resort will, prior to that date, make
10 changes to its golf course irrigation systems such that it will no longer require the
11 effluent from the Plant.

12 In addition, the settling parties agree that Liberty Black Mountain will route
13 additional wastewater flows to the Scottsdale plant via Tom Darlington Drive.
14 Originally, Liberty Black Mountain intended to increase existing piping capacity
15 south from the Plant site to the Scottsdale plant. It is my understanding from
16 Liberty Black Mountain that trenching difficulties of that routing make it more
17 cost effective to route the additional effluent to Scottsdale via Tom Darlington
18 Drive, rather than through the residential areas of the Boulders.

19 The settling parties also agree that Liberty Black Mountain will recover the
20 costs of closing the plant as follows:

- 21 • Liberty Black Mountain agrees to not seek recovery of \$200,000 of the
22 legal fees related to the Marshall litigation.
- 23 • The Resort agrees that its effluent rate should be increased between the
24 time new rates go into effect as a result of this proceeding, through the
25 closure date of the Plant such that Liberty Black Mountain will recover
26 \$108,000 through effluent sales to the Resort during that time period.

- 1 • Recovery of the remaining closure costs will occur as follows:
 - 2 ○ A Stage 1 Surcharge, to be implemented at the time new rates go
3 into effect as a result of this proceeding, to recover \$825,080.51
4 (which is the remaining closure costs incurred through September
5 30, 2015, after removal of the \$200,000 withdrawn by Liberty Black
6 Mountain and the \$108,000 to be recovered through the effluent
7 rates paid by the Resort). Liberty Black Mountain estimates this
8 surcharge will be \$6.31 per customer per month.
 - 9 ○ A Stage 2 Surcharge to recover the \$1.2 million which Liberty Black
10 Mountain will pay Scottsdale to purchase 120,000 gallons per day of
11 additional treatment capacity at Scottsdale's plant. This surcharge
12 will be recovered from customers beginning within 90 days of
13 Liberty Black Mountain's payment of the \$1.2 million to the City of
14 Scottsdale.
 - 15 ○ A Stage 3 surcharge, which will recover the additional costs Liberty
16 Black Mountain incurs for closure of the Plant, which Liberty Black
17 Mountain estimates will be \$2,699,700. This surcharge will go into
18 effect within 90 days after the Plant is closed on November 30,
19 2018.
 - 20 ○ Liberty will also be permitted to seek, in a subsequent rate case, the
21 additional costs it incurs to remove the Plant from the site and
22 remediate the site. Recovery of these amounts would be net of any
23 share of the gain on the sale of the site, pursuant to the terms of the
24 Plant Closure Agreement.

25 Further, the Town and Liberty Black Mountain will propose in this
26 proceeding, by December 22, 2015, a separate wastewater tariff for light

1 industrial customers, such as breweries, for which water usage greatly exceeds
2 the amount of wastewater which they contribute to the wastewater system, which
3 tariff will not compute charges based on the customer's water usage but on some
4 other appropriate means (e.g. actual wastewater flows). The Town has received
5 inquiries from one or more potential new light industrial commercial enterprises
6 that would consider locating in the Town. Liberty Black Mountain's proposed
7 commercial tariff structure (which computes wastewater charges based on
8 customers' actual water usage) would be problematic for customers that may use
9 far more water than would actually end up flowing into Liberty Black Mountain's
10 wastewater system. This proposed commercial tariff structure, while supported
11 by the Town, will impede the economic growth the Town would expect from the
12 addition of such light industrial enterprises. Therefore, Liberty Black Mountain
13 and the Town have agreed to propose an alternative tariff for such light industrial
14 customers that would eliminate a disincentive for such customers to locate in the
15 Town.

16 Further, the Resort agrees to withdraw its appeal of the 2013 Closure Order
17 upon Commission approval of the Proposed Settlement Agreement. Liberty
18 Black Mountain, the Resort and BHOA will seek a stay of the oral argument
19 currently scheduled at the Court of Appeals pending the Resort's withdrawal of
20 appeal.

21
22 **Q. WHAT ARE THE BENEFITS OF THE SETTLEMENT AGREEMENT?**

23 A. A closure date of November 30, 2018 will address the Resort's need for continued
24 delivery of effluent until it can implement the changes to its irrigation system, and
25 will provide nearby residents with a date certain for closure of the Plant. Further,
26 the Proposed Settlement Agreement provides that the litigation regarding the

1 Plant closure will be withdrawn upon the Commission's adoption of the Proposed
2 Settlement Agreement, ending the years of costly litigation related to these
3 matters. Additionally, the Settlement Agreement provides for the development of
4 a new light industrial tariff that will promote economic development within the
5 Town.

6 Further, the Proposed Settlement Agreement provides a reasonable
7 resolution of the cost recovery issues the Town was intending to raise in this
8 proceeding. Liberty Black Mountain has agreed to not seek recovery of \$200,000
9 (of the \$281,829.36 total) of legal expenses related to the Marshall litigation.
10 And the Resort has agreed to an increased effluent rate such that the Resort will
11 pay what is equivalent to half of the legal costs Liberty Black Mountain incurred
12 in litigating the Appeal and the related actions. The Town finds these to be
13 reasonable resolutions to the recovery of the amounts to which the Town was
14 intending to object.

15 Even if the Plant were not closed as provided for in the Proposed
16 Settlement Agreement, it is an old facility that cannot last forever. If the Plant
17 were to continue operating, it would still need to be replaced at some point in the
18 foreseeable future, and replacing it at the current site would likely be impossible
19 due to current setback requirements. Replacement of the Plant in the future with
20 treatment capacity from Scottsdale or at another facility would be far more
21 expensive than the cost to obtain that replacement capacity now for \$10 per gallon
22 (today's market prices for such treatment capacity are in the range of \$25 to \$30
23 per gallon). Further, the cost of piping to route additional flows to Scottsdale, and
24 cost to close the Plant and remediate the site, will only increase with time. It is
25 inevitable that the Plant would close at some point, and it makes sense to replace
26 it under the terms now available, rather than wait for what will be only higher cost

1 options later.

2

3 **CONCLUSION**

4 **Q. WHAT SPECIFICALLY ARE YOU REQUESTING FROM THE**
5 **COMMISSION AT THIS TIME?**

6 A. The Town is requesting that the Commission approve the Proposed Settlement
7 Agreement.

8 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

9 A. Yes.

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12 458805;sww;26006-0001

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